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C O N F I D E N T I A L SECTION 01 OF 02 LAGOS 000088

SIPDIS

E.O. 12958: DECL: 12/31/2018  
TAGS: [PHUM](#) [EPET](#) [KDEM](#) [PGOV](#) [NI](#)  
SUBJECT: NIGERIA: LAWYER: OKAH'S SECRET TRIAL INTENDED TO  
PROTECT GOVERNMENT OFFICIALS

REF: LAGOS14

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Classified By: CONSUL GENERAL DONNA BLAIR FOR REASONS 1.4 (B) AND (D).

11. (C) Summary: In January 15 and February 9 meetings in Lagos with Festus Keyamo (strictly protect throughout), human rights lawyer and activist, Keyamo claimed that the trial of Henry Okah, alleged head of the Movement for the Emancipation of the Niger Delta (MEND) who is currently charged with treason and being tried in secret, is an attempt by the federal government to make a national example of militants from the Niger Delta. His view that the government's insistence on a secret trial for Okah violates his constitutional rights is one shared by many human rights lawyers, who consider this a violation of his right to a fair hearing in public as required by Section 36(4) the Constitution of the Federal Republic of Nigeria of 1999. The secret trial keeps evidence of the complicity of government officials out of the public eye, Keyamo stated. On February 13, the federal judge who has been assigned to the case since 2007 resigned and asked that the case be re-assigned to the correct jurisdiction in which the crimes had been committed, according to procedural rules. Keyamo stressed that he did not believe Okah was a political prisoner, and that he doubts anyone calling themselves MEND is now fighting for a cause. End summary.

12. (C) On January 15, Poloff and Labor Attache met with Festus Keyamo (strictly protect), one of Nigeria's best known human rights lawyers and activists, to discuss his work in human rights court cases and anti-corruption. Keyamo revealed that he is currently working as lead prosecutor for several Economic and Financial Crimes Commission (EFCC) cases against former governors in southern Nigeria, and has close ties to the EFCC and other anti-corruption bodies. He also served as the lead defense lawyer in the case of Mujahid Dokubo-Asari, the founder of the Niger Delta People's Volunteer Force. During Asari's trial, which received extensive publicity, militant groups increased their attacks and kidnappings and threatened to continue doing so if he was not released, Keyamo said. He described the trial as having the trappings of national political theater, as militants sought to raise awareness of exploitation and suffering in the Delta. Keyamo told Poloff that Asari's eventual release was a secret political arrangement between the defense team and the top levels of government, including President Umaru Yar'Adua, as a way to appease the militants and to seek resolution to the conflict.

13. (C) The prosecution of Henry Okah, ostensibly the leader of the Movement for the Emancipation of the Niger Delta (MEND), is the government's latest attempt to use the judicial process for the political purpose of intimidating the militants, Keyamo said. Although the press has reported that Okah is charged with 82 counts of treason, arms trafficking, bank robbery, and terrorism, Keyamo stated that the exact charges are still unknown, and that all information relating to the case is strictly controlled. The government is insisting on a trial "in camera", Keyamo said, in violation of Okah's constitutional rights, which include, pursuant to Article 36(4) of the Constitution of the Federal Republic of Nigeria, a right to a fair hearing in public. (Note: Section 34(4)(b) further provides that if a Minister of the Federal Government or a Commissioner of a State Government "satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed", the court shall make arrangements for evidence to be heard in private and take other action to prevent disclosure of the matter.) Keyamo believes that the government is insisting on secrecy in Okah's case to suppress information about top government and military officials with whom Okah has been closely associated. Keyamo and other activists have expressed that it is in the public interest to hold an open trial that could reveal information about government officials' complicity in illegal activities. Unlike in Asari's case, Keyamo said, this time the government realizes that releasing Okah will not decrease the violence in the Niger Delta or promote peace.

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14. (C) Citing news reports, Keyamo said Okah and MEND have been heavily involved in illegal arms smuggling, and had stolen arms from a Nigerian military armory on behalf of MEND. (Note: There are, of course, additional reports implicating Okah in arms smuggling from Angola and South Africa. End note) The group is also reported as having obtained large sums of funds through illegal oil bunkering. However, Keyamo believes that it is impossible for illegal bunkering to occur without direct government complicity. Politicians in the state and federal governments, as well as top military officials supposedly fighting militancy in the region obtain enormous amounts of money from the sale of illegal crude oil, Keyamo alleged. The funds from illegal oil bunkering fuel the illegal arms trade, in which top government officials are complicit, he stated. Furthermore, Keyamo said he is aware of evidence that the military supplies weapons to MEND based on an "arms trade agreement". He contended that it is impossible for MEND to secretly steal arms from the military, but that the military provides the arms as part of an arrangement to balance the power structures in the Delta and to assure continued illegal bunkering.

Judge Agrees Jos Trial Venue Must Be Changed  
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15. (C) There are strong arguments that the trial venue is inappropriate, Keyamo said. Although the Attorney General of the Federation determined that the trial must be held in Jos, a criminal trial is required to be held in a jurisdiction in which some element of the crime or crimes took place; there would appear to be no nexus between any of the crimes and Jos, Keyamo said. On January 23, Okah's lawyer, Femi Falana, submitted an application that the court was biased by situating the court in Jos, arguing that none of the crimes were alleged to have taken place there. On February 13, the federal judge assigned to the case since 2007 ruled that he would withdraw from the trial and submit the case to the Chief Justice of the Federal High Court, requesting that the case be reassigned to another court as Jos was not the proper

jurisdiction.

Okah Not a Political Prisoner; MEND Has No Cause  
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¶6. (C) Keyamo noted that concerns raised by human rights lawyers as to the constitutionality of the secret proceedings, or the appropriateness of the venue should not be read as a defense of any crimes Okah might have committed.

There may be more than adequate evidence on which to base a finding of guilt on the counts with which Okah is charged, whether the trial is in camera or open to the public, Keyamo said during the February 9 conversation. Instead, human rights lawyers and others are protesting the manipulation of the judicial process, which they believe to be for the purpose of protecting the interests of high-level officials. Nor does Keyamo believe that whoever makes up MEND are still fighting for a cause, if indeed they ever were. As native of Warri, Delta state, Keyamo is well connected throughout the Niger Delta region; he believes that, because the region lacks a strong political godfather, militants, some calling themselves MEND, will continue to operate in uncoordinated chaos. Keyamo doubts that militants can be persuaded to work for peace in the region.

¶7. (C) Comment: Keyamo's strong statements about government and military officials reflect the widespread belief that government is not only allowing oil bunkering and arms smuggling, but is in fact, complicit in and benefiting from these activities. Based on his defense of Asari, Keyamo undoubtedly knows whereof he speaks. Keyamo's view that the government's insistence on a secret trial for Okah violates his constitutional rights to a fair trial is one that is shared by many human rights attorneys. Following the resignation of the judge assigned to the trial, activists believe that a change of location may be the first step toward a more transparent judicial process in the Okah case. End comment.

¶8. (U) This cable has been coordinated with Embassy Abuja.  
BLAIR